

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Rule making related to E-15 access standard

The Agriculture and Land Stewardship Department hereby adopts new Chapter 86, “E-15 Access Standard,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in 2022 Iowa Acts, House File 2128.

State or Federal Law Implemented

This rule making implements, in whole or in part, 2022 Iowa Acts, House File 2128.

Purpose and Summary

This rule making implements portions of 2022 Iowa Acts, House File 2128, regarding biofuels access, by establishing a new E-15 access standard chapter. This rule making does the following:

- Establishes definitions for the chapter.
- Establishes the procedure for ensuring compliance with the E-15 access standard.
- Outlines the process for fuel retailers to apply for Class 1 and Class 2 incompatible infrastructure waivers.
- Outlines the process for fuel retailers to apply for a small motor fuel retailer exemption.
- Specifies terminable events and requires fuel retailers to notify the Department when a terminable event is planned to occur, is occurring, or has occurred.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 7, 2022, as **ARC 6516C**. No public comments were received.

Two changes from the Notice have been made.

1. The definition of “retail dealer” in rule 21—86.1(214A) was revised to cite the definition in Iowa Code section 455G.30 because the definition as proposed did not match the statute.
2. For a Class 1 incompatible infrastructure waiver, language was added in subrule 86.3(1) that states the Department may consult with the Department of Natural Resources to confirm information that is submitted on an application.

Adoption of Rule Making

This rule making was adopted by the Department on November 14, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 21—Chapter 8.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 18, 2023.

The following rule-making action is adopted:

Adopt the following **new** 21—Chapter 86:

CHAPTER 86
E-15 ACCESS STANDARD

21—86.1(214A) Definitions.

“*Class 1 waiver*” means an incompatible infrastructure class 1 waiver order.

“*Class 2 waiver*” means an incompatible infrastructure class 2 waiver order.

“*Department*” means the department of agriculture and land stewardship.

“*Motor fuel storage and dispensing infrastructure*” means the same as defined in Iowa Code section 214A.1 as amended by 2022 Iowa Acts, House File 2128, section 14.

“*Retail dealer*” means the same as defined in Iowa Code section 455G.30 as enacted by 2022 Iowa Acts, House File 2128, section 25.

“*Retail motor fuel site*” means a geographic location in this state where a retail dealer sells and dispenses motor fuel on a retail basis.

“*Special status*” means a status assigned to a retail dealer who is ineligible for an incompatible infrastructure class 2 waiver order pursuant to Iowa Code section 214A.35(6) as enacted by 2022 Iowa Acts, House File 2128, section 5.

21—86.2(214A) E-15 access standard—retail dealer compliance.

86.2(1) A retail dealer shall advertise for sale and sell E-15 gasoline pursuant to Iowa Code section 214A.32 as enacted by 2022 Iowa Acts, House File 2128, section 2, unless any of the following apply:

- a. The retail dealer has been granted an incompatible infrastructure class 1 waiver order;
- b. The retail dealer has been granted an incompatible infrastructure class 2 waiver order;
- c. The retail dealer has been granted a small retail motor fuel site exemption.

86.2(2) Failure to comply with this rule may result in the suspension or revocation of the retail dealer's license.

21—86.3(214A) Incompatible infrastructure waivers.

86.3(1) *Class 1 waiver.* A retail dealer may apply for a class 1 waiver from the E-15 access standard by submitting a completed application to the department. The retail dealer shall include supporting documentation with the application regarding the retail motor fuel site's gasoline storage tanks including but not limited to the date of installation and the material that the tank is constructed from. The department may consult with the department of natural resources to confirm documentation submitted by the retail dealer.

86.3(2) *Class 2 waiver.* A retail dealer may apply for a class 2 waiver from the E-15 access standard by submitting a completed application to the department. The retail dealer shall include supporting documentation with the application including a completed inspection report prepared by a certified professional retail motor fuel site installer regarding the compatibility of the retail motor fuel site's motor fuel storage and dispensing infrastructure to store and dispense E-15 gasoline. The inspection report shall include an inventory of all motor fuel storage and dispensing infrastructure at the retail

motor fuel site. The inspection report shall also include the total estimated cost of improving the retail motor fuel site to comply with the alternative E-15 access standard by installing, replacing, or converting the gasoline storage and dispensing infrastructure located at the retail motor fuel site.

86.3(3) *Special status.* If it is determined that a retail dealer is ineligible for a class 2 waiver, the department shall assign the retail dealer special status and shall forward the designation to the renewable fuel infrastructure fund board and relevant department staff.

21—86.4(214A) Small retail motor fuel site exemption.

86.4(1) A retail dealer may apply for a small retail motor fuel site exemption from the E-15 access standard by submitting a completed application to the department. The retail dealer shall provide the department with the retail motor fuel site's total gasoline gallonage for calendar years 2020, 2021, and 2022 at the time of application. The department shall share the information provided by the retail dealer with the department of revenue to certify that the total gasoline gallonage is accurate. Once the gasoline gallonage is certified, the department shall grant an exemption if the average annual gasoline gallonage is less than 300,000 gallons for the qualifying phase.

86.4(2) The department will use the following methodology to determine the average annual gasoline gallonage:

a. For a retail dealer who has operated a retail motor fuel site for less than three years, all available sales data will be used to determine eligibility.

b. In cases where three full years of sales data are unavailable, the available sales data will be divided by the time frame the data represents to determine average annual sales.

21—86.5(214A) Terminable events.

86.5(1) A retail dealer shall notify the department when a terminable event is planned to occur, is occurring, or has occurred. Failure to notify the department may result in the termination of a class 1 waiver, class 2 waiver, or small retail motor fuel site exemption. The department may also suspend or revoke the retail dealer's license.

86.5(2) A terminable event includes:

a. The failure of a retail dealer to be licensed as required under Iowa Code section 214.2 to use a commercial weighing and measuring device when dispensing gasoline at the retail motor fuel site;

b. The cessation of the retail dealer's business of advertising for sale or selling gasoline at the retail motor fuel site;

c. The installation, replacement, or conversion of a gasoline storage tank located at the retail motor fuel site.

These rules are intended to implement Iowa Code chapter 214A and 2022 Iowa Acts, House File 2128.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/14/22.